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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/726,032	11/30/2000	Jeffrey Kent Fredenburgh	JJ-10 072-IUS	9978

7590

03/27/2003

John C Jeffrey
Macbeth & Johnson
13 Richmond Street West
Suite 301
Toronto, ON M5H 2L7
CANADA

EXAMINER

WARE, DEBORAH K

ART UNIT

PAPER NUMBER

1651

DATE MAILED: 03/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/726,032

Applicant(s)

Freundenburgh

Examiner

Deborah Ware

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Oct 24, 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above, claim(s) 21-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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Claims 1-32 are pending.

1. Applicant's election without traverse of Group I, claims 1-20 in Paper No. 3 is acknowledged. Claims 21-32 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention(s), there being no allowable generic or linking claim. Election was made without traverse in Paper No. 3.

2. Claims 4-5 and 15 are objected to because the scientific numerical representations are not correct. The exponent is in the wrong place. Correction is requested.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 1 is rendered vague and indefinite for the recitation of "the dormant bacterial preparation" at line 9, and also in claims 6-7 in lines 2-3 of each claim, wherein the term lacks antecedent basis in the claim. Also the phrase "with surface" is unclear and lacks antecedent basis as well. It is suggested to correct these deficiencies by change "the" to --a-- and inserting --the-- after "with" in the latter phrase noted above. Also in claims 4-5 and 15 it is suggested to insert --the-- before the last occurrence of "surface" in last line of each claim.

6. Claims 5 is further rendered vague and indefinite for the recitation of "the carpet" at line 2. The term appears to lack antecedent basis.

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7. Claim 10 is further objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

8. Claim 12 and 15 are rendered vague and indefinite for the recitation of "the surface" at line 2 in claim 12 and line 3 of claim 15 wherein it appears to perhaps lack antecedent basis since the composition is intended to impart odor control for more than one surface, as the term "surfaces" also cited in line 2 and line 3 of claim 15 intends. It is suggested to change "the surface" at line 2 of claim 12 and line 3 of claim 15 to --the surfaces--.

9. Claims 19 is further objected to because at line 2, the dependency is from "claim 22", however, claim 19 must depend from a previous dependent claim which occurs before in as in claim 17, for example or from its independent claim, claim 12.

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

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11. Claims 1-8 and 12-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Lin et al. (A).

Claims are drawn to method and composition for odor controlling of surfaces comprising applying a composition comprising Bacillus.

Lin et al. teach method and composition for odor controlling of surfaces comprising applying a composition comprising Bacillus. Note the abstract, and col. 1, lines 1-10, 55-60, col. 2, lines 21-30, 35-40, 60-66, col. 3, lines 15-25, col. 4, lines 40-66, col. 5, lines 35-40 and 50-66, col. 6, line 35, col. 7, all lines and col. 11, lines 20-35.

The claims are identical to the disclosure of Lin and thus, are considered to be anticipated by the teachings of the reference. The percent total bacteria is inherent to the amounts disclosed by Lin.

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103 and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

13. Claims 6-7 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin, cited above.

14. The claims only differ in that specific percent amounts are claimed and the Lin reference does not specifically disclose these amounts, per se. Thus, even if Applicants successfully argue that these amounts are not inherent to Lin, these amounts would have been obvious over Lin because Lin also teaches a ratio count of 5% of *Bacillus polymyxa* and 90% *Bacillus licheniformis*, thus, it is clearly within the skill of one in the art to modify ranges for a spore mixture as disclosed at col. 7, lines 1-41 of Lin. The claims would have been obvious over Lin at the time the claimed invention was made since Lin clearly teaches the percent amounts or at least suggests them. These claims 6-7 and 16-17 are clearly an obvious modification at the very least.

15. Claims 5 and 8-11 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 97/43385 or Lin, both in view of Horney et al. (B) and Blyth et al. (C) and Vinod (D).

Claims are drawn further to method and composition, therefore, containing specific stain-blocking chemicals and/or anti-soil fluorochemicals and trapping agents such as sodium bicarbonate, etc.

WO patent teaches controlling odor and compositions, therefore, containing enzymes from microorganisms, and condensation products, such as bicarbonates, etc. See entire reference.

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Lin is discussed above.

Horney teach *Bacillus megaterium*, at col. 2, line 49 and amounts at col. 4, line 40.

Blyth and Vionod both teach antisoiling fluorochemicals or stain blockers, for treating carpets, etc. Note col. 13-14, all lines in Vinod and the abstract in Blyth.

The claims differ from the primary references the WO patent or Lin in that the specific chemicals are not clearly disclosed.

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was filed to combine the prior art references cited above since the chemicals are clearly disclosed by the secondary references for treating carpet and to combine to well known odor controlling substances for treating carpet is clearly within the skill of an ordinary artisan. Each of the ingredients and method steps are clearly disclosed in the cited prior art. In the absence of convincing and persuasive evidence to the contrary the claims are prima facie obvious.

All claims fail to be patentably distinguishable over the state of the art discussed above and cited on the enclosed PTO-892 and/or PTO-1449. Therefore, the claims are properly rejected.

The remaining references listed on the enclosed PTO-892 and/or PTO-1449 are cited to further show the state of the art.

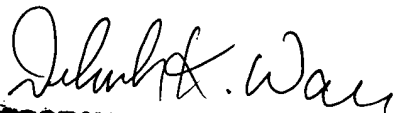
No claims are allowed.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is (703) 308-4245. The examiner can normally be reached on Mondays to Fridays from 9:30AM to 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn, can be reached on (703) 308-4743. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.


DEBORAH K. WARE
PATENT EXAMINER

Deborah K. Ware

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March 22, 2003